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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 893.

PAYNE FURNACE AND SUPPLY COMPANY, INC., a corporation,

Petitioner,

vs.

WILLIAMS-WALLACE COMPANY, a corporation,

Respondent.

Motion for Leave to File and Petition for Rehearing.

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MOTION FOR LEAVE TO FILE PETITION FOR REHEARING.

To: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The above named Petitioner presents this, its Motion for leave to file the annexed Petition for a re-hearing of its Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, and in support thereof respectfully shows: –

That re-hearing is sought because of the necessity for an authoritative and final resolution, by a decision of this Court, of the serious conflict of decisions existent respecting the interpretation and application of the disclaimer statutes, *R.S.U.S. 4917 and 4922 (35 USCA, Secs. 65 and 71)*, and *R.S.U.S. 973 (28 USCA, Sec. 821)*; and in particular with respect to the continuing

abuse of the beneficent provisions of such statutes, by patentees asserting to file disclaimers, which in fact and in law are revisions and re-statements of patent claims, without submitting the re-stated claim or claims to the constituted authorities, *i. e.*, for examination and approval by the Commissioner of Patents as required by the re-issue statute, *R.S.U.S. 4916 (35 USCA, Sec. 64)*; that this practice has resulted in a hopeless confusion of the law as demonstrated by the decisions of the District Courts of the United States and of the Courts of Appeals; that the Petition herein seeks a review of a decision of the United States Circuit Court of Appeals for the Ninth Circuit which instances by the division of said court the conflict of opinion existent respecting the applicable interpretation of said disclaimer statutes; that this case presents no issue of fact to be reviewed and the Petition for Certiorari herein presents directly, upon the adjudicated facts of the case, the questions of law sought to be reviewed, respecting which such confusion of decisions exists, and clearly illustrates the uncertainty and conflict of interpretation of said disclaimer statutes and the public need for a final determination by this Court of this conflict of decisions.

Wherefore, the Petitioner moves that leave to file the annexed Petition for Re-hearing be granted.

Respectfully submitted,

FREDERICK S. LYON,
LEONARD S. LYON,
Attorneys for Petitioner.